

August 30, 2017

Honorable Stacy Ruble
Secretary
Postal Regulatory Commission
901 New York Avenue, NW, Suite 200
Washington, DC 20268-0001

Dear Mr. Ruble:


Pursuant to 39 U.S.C. § 407(d)(2), the U.S. Postal Service (Postal Service) is providing a copy of the following Data Sharing Agreement (DSA) between the Postal Service and Bhutan Post: Agreement for the Electronic Exchange of Customs Data, signed by the Postal Service on August 21, 2017 and by Bhutan Post on July 26, 2017. The Postal Service has marked the non-public version of the DSA as "Confidential" and "Non-Public" because it contains information considered confidential and commercially sensitive by the affected postal operator and the Postal Service.

The Postal Service considers certain portions of the document to be protected by 39 U.S.C. § 410(c)(2) and thereby not subject to mandatory disclosure under the Freedom of Information Act (FOIA). Further, the document contains the commercial information of the affected postal operator, and as such, certain portions of the instrument are subject to protection under Exemption 4 of the FOIA. Consequently, we have attached an application for non-public treatment of these documents under 39 C.F.R. § 3007.21. See Attachment 1. In addition, we respectfully request that the Postal Regulatory Commission coordinate with us in the event that the documents become subject to a FOIA request, so that we can engage in appropriate consultations with the affected postal operators.

Please feel free to contact me if further information would be helpful.

Sincerely,



 Anthony Alverno
Chief Counsel,
Global Business and Service Development

Enclosures

ATTACHMENT 1**APPLICATION OF THE UNITED STATES POSTAL SERVICE FOR
NON-PUBLIC TREATMENT OF MATERIALS**

In accordance with 39 C.F.R. § 3007.21 and Order No. 225,¹ the United States Postal Service (Postal Service) hereby applies for non-public treatment of the enclosed Data Sharing Agreement (“DSA”) between the Postal Service and a postal operator. The Postal Service is transmitting this DSA to the Postal Regulatory Commission (Commission) in accordance with 39 U.S.C. § 407(d). A redacted version of the DSA is enclosed as Attachment 2. The Postal Service hereby furnishes below the justification required by 39 C.F.R. § 3007.21(c) for this Application.

(1) The rationale for claiming that the materials are non-public, including the specific statutory basis for the claim, and a statement justifying application of the provision(s);

The materials designated as non-public consist of information of a commercial nature that would not be publicly disclosed under good business practices as well as information that may impact law enforcement interests. In the Postal Service's view, this information would be exempt from mandatory disclosure pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3) and (4).² Because the portions of the materials that the Postal Service seeks to file under seal fall within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support its

¹ PRC Order No. 225, Final Rule Establishing Appropriate Confidentiality Procedures, Docket No. RM2008-1, June 19, 2009.

² In appropriate circumstances, the Commission may determine the proper level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A). The Commission has indicated that “likely commercial injury” should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.

determination that these materials are exempt from public disclosure and to grant its application for their non-public treatment.

(2) Identification, including name, phone number, and e-mail address for any third party who is known to have a proprietary interest in the materials, or if such an identification is sensitive, contact information for a Postal Service employee who shall provide notice to that third party;

In the case of agreements such as the one transmitted here, the Postal Service believes that any postal operator that is party to the agreement is the only third party with a proprietary interest in the materials. The Postal Service identifies as an appropriate contact person Ms. Michaela George. Ms. George's phone number is (202) 268-5522, and her email address is michaela.i.george@usps.gov. The Postal Service has already informed the participating postal operator, in compliance with 39 C.F.R. § 3007.20(b), about the nature and scope of this filing and about the postal operator's ability to address any confidentiality concerns directly with the Commission.³

(3) A description of the materials claimed to be non-public in a manner that, without revealing the materials at issue, would allow a person to thoroughly evaluate the basis for the claim that they are non-public;

Pursuant to 39 U.S.C. § 407(d), the Postal Service is transmitting a DSA with a foreign postal operator that is an agency of a foreign government. The DSA includes information concerning the transmission of electronic data between the Postal Service and the foreign postal operator. Such electronic data is used by law enforcement entities to ensure compliance with various U.S. laws and regulations, including those relates to imports, exports, and mailability. The Postal Service may also use the

³ The Postal Service acknowledges that 39 C.F.R. § 3007.21(c)(2) appears to contemplate only situations where a third party's identification is "sensitive" as permitting the designation of a Postal Service employee who shall act as an intermediary for notice purposes. To the extent that the Postal Service's filing might be construed as beyond the scope of the Commission's rules, the Postal Service respectfully requests a waiver to designate a Postal Service employee as the contact person under these circumstances.

electronic data for operational and customer services purposes. The redactions applied to the DSA protect the specifics of the electronic transfer of data between the Postal Service and its counter-party.

(4) Particular identification of the nature and extent of commercial harm alleged and the likelihood of such harm;

If the portions of the DSA that the Postal Service determined to be protected from disclosure due to their commercially sensitive nature were to be disclosed publicly, the Postal Service considers that it is quite likely that it could suffer commercial harm. The details of electronic data transfers — including the content, timing, and method of such transfers — are commercially sensitive, and would not be disclosed under good business practices. If this information were made public, competitors of the Postal Service and its counter-party, including private entities and other postal operators not a party to this DSA, could use the information to identify strengths and vulnerabilities in operations and customer service. Postal operators not currently a party to any DSA also might use the information to their advantage in negotiating future DSAs with the Postal Service.

Additionally, if the redacted information were to be disclosed publicly, it would assist entities seeking to circumvent law enforcement efforts to ensure compliance with various U.S. laws and regulations, including those governing imports, exports, and mailability.

The Postal Service considers the use of the redacted information to gain commercial advantage and to circumvent law enforcement to be highly probable outcomes that would result from public disclosure of the redacted material.

(5) At least one specific hypothetical, illustrative example of each alleged harm;

Harm: Public disclosure of the redacted terms of the DSA would provide other foreign postal operators negotiating power to obtain similar terms from the Postal Service.

Hypothetical: The negotiated terms are disclosed publicly on the Postal Regulatory Commission's website, which another postal operator sees. That other postal operator then uses that publicly disclosed information to insist that it must receive similar, or better, terms when negotiating its own DSA with the Postal Service.

Harm: Public disclosure of redacted information in the DSA would be used by competitors to the detriment of the Postal Service.

Hypothetical: A competing delivery service obtains unredacted versions of the DSA from the Postal Regulatory Commission's website. The competitor analyzes the DSA to determine strengths and weaknesses of the Postal Service's operational and customer service abilities. The competing delivery service then targets the area of weaknesses to gain leverage in the marketplace, thereby significantly cutting into the revenue streams upon which the Postal Service relies to finance provision of universal service.

Harm: Public disclosure of information in the DSA would be used detrimentally by the foreign postal operator's competitors.

Hypothetical: A competing international delivery service obtains a copy of the unredacted version of the DSA from the Commission's website. The competitor analyzes the DSA to determine strengths and weaknesses of the foreign postal operator's operational and customer service abilities. The competitor then targets the areas of weakness to gain leverage in the marketplace, thereby significantly cutting into the revenue streams of the foreign postal operator.

Harm: Public disclosure of information in the DSA would be used to circumvent U.S. and foreign laws and regulations.

Hypothetical: Entities or individuals seeking to circumvent U.S. laws and regulations or those of the Postal Service's counterparty obtain an unredacted copy of the DSA from the Commission's website. Those entities or individuals then use the information regarding electronic data transfer to circumvent efforts by domestic or foreign law enforcement agencies to enforce laws and regulations governing, *inter alia*, imports, exports, and mailability.

(6) The extent of protection from public disclosure deemed to be necessary;

The Postal Service maintains that the redacted portions of the materials filed non-publicly should be withheld from persons involved in competitive decision-making in the relevant market for international delivery products (including both private sector integrators and foreign postal operators), as well as their consultants and attorneys. Additionally, the Postal Service believes that actual or potential customers of the Postal Service (including other postal operators) should not be provided access to the non-public materials.

(7) The length of time deemed necessary for the non-public materials to be protected from public disclosure with justification thereof; and

The Commission's regulations provide that non-public materials shall lose non-public status ten years after the date of filing with the Commission, unless the Commission or its authorized representative enters an order extending the duration of that status. 39 C.F.R. § 3007.30.

(8) Any other factors or reasons relevant to support the application.

None.

Conclusion

For the reasons discussed, the Postal Service respectfully requests that the Commission grant its application for non-public treatment of the identified materials.

AGREEMENT FOR THE ELECTRONIC EXCHANGE OF CUSTOMS DATA

AGREEMENT FOR THE ELECTRONIC EXCHANGE OF CUSTOMS DATA

BETWEEN THE POSTAL OPERATORS LISTED IN ANNEX H

RECITALS

WHEREAS, the postal operators listed in annex H are the designated postal operators of their respective territories and provide international postal services;

WHEREAS, the Parties understand the need to devote appropriate resources to facilitate the exchange of electronic customs data;

WHEREAS, the Parties recognize that EDI is one of the most effective ways to exchange data between trading partners and is therefore broadly used for international trade;

WHEREAS, the Parties understand that service and efficiency improvements can be achieved if postal operators of origin transmit data on outbound international postal items to the destination postal operators, for the purposes of customs clearance, [REDACTED]

WHEREAS, the Parties also recognize the importance of data and privacy protection in view of the long-lasting reputation of postal operators as guardians of the integrity of the mail; and

WHEREAS, the undersigned postal operators have agreed that the *Exchange of Customs Data Guide* referenced and incorporated herein will be finalized and entered into force no later than 12 months after execution of the Agreement for the Electronic Exchange of Customs Data.

The undersigned Parties hereby agree as follows:

OPERATIVE TERMS

1. Definitions

Agreement: means this Agreement for the Electronic Exchange of Customs Data

Authority or Authorities: means all officially authorized agencies associated with the inspection or control of postal items at a country's borders, in accordance with the national laws of each country.

Customs Data: means [REDACTED]

Customs Form: means the customs declaration form to be affixed on postal items exchanged between the Parties to be submitted for customs control in accordance with the laws of the countries of origin and destination.

Electronic Data Interchange (EDI): means computer-to-computer exchange of data, by means of networks and formatted messages.

Exchange of Customs Data Guide: means the guide containing all functional and operational information relating to each Party needed for the electronic exchange of Customs Data as at the date of adoption of the guide and as may be amended by the Parties from time to time.

Party: means the postal operators listed in annex H, and any additional postal operator that has acceded to the Agreement as set forth in Article 25.

Parties: means two or more of the Parties collectively as best suits the context in which the term is used.

Personal Data: means [REDACTED]

Receiving Party: means a Party that has received Customs Data through EDI messages from any other Party.

Sending Party: means a Party that transmits Customs Data through EDI messages to any other Party.

System: means the telematic system used to create, send, receive, or handle data messages.

UPU: means the Universal Postal Union, a specialized agency of the United Nations, whose aim is to secure the organization and improvement of the postal services and to promote the development of international collaboration in this sphere and which develops standards commonly used by postal operators.

2. Subject and purpose

This Agreement shall set the conditions pursuant to which Customs Data relating to postal items exchanged by the Parties are processed and exchanged electronically between the Parties.

3. Data capture

3.1 Customs Data relating to the items defined in Article 4 shall be captured in the System by each Party [REDACTED]

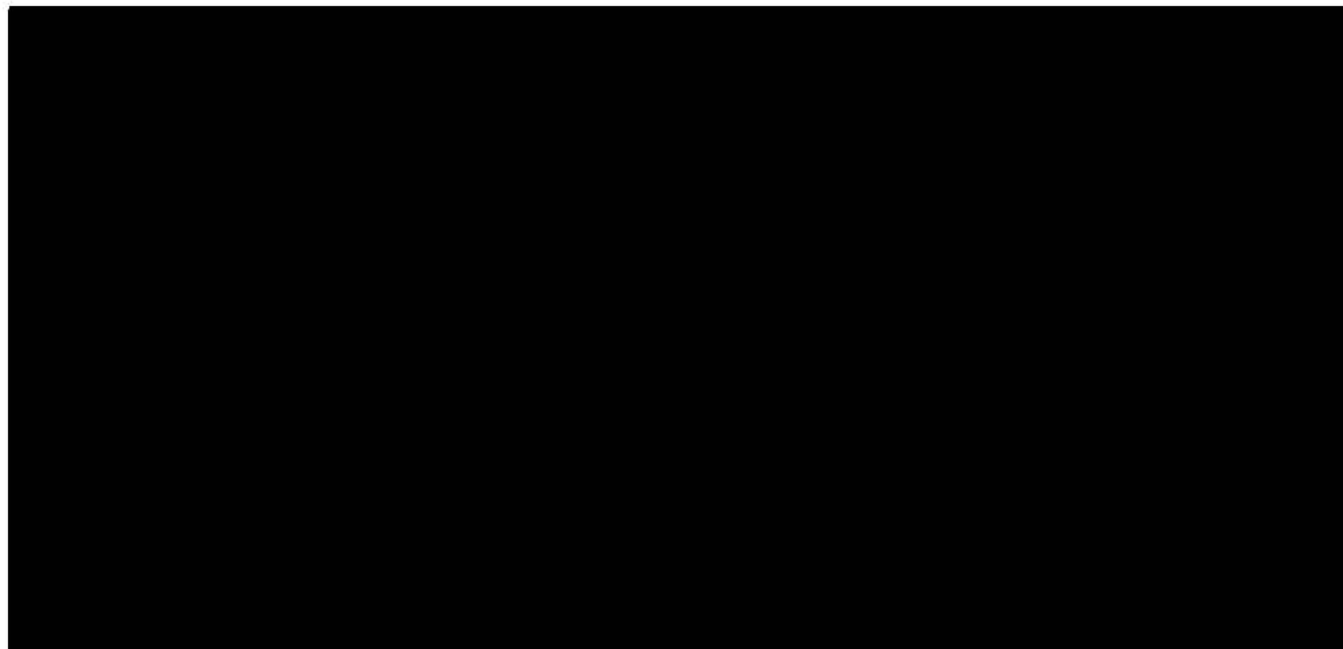
3.2 The Customs Data to be captured in the System are as set out in Annex B.

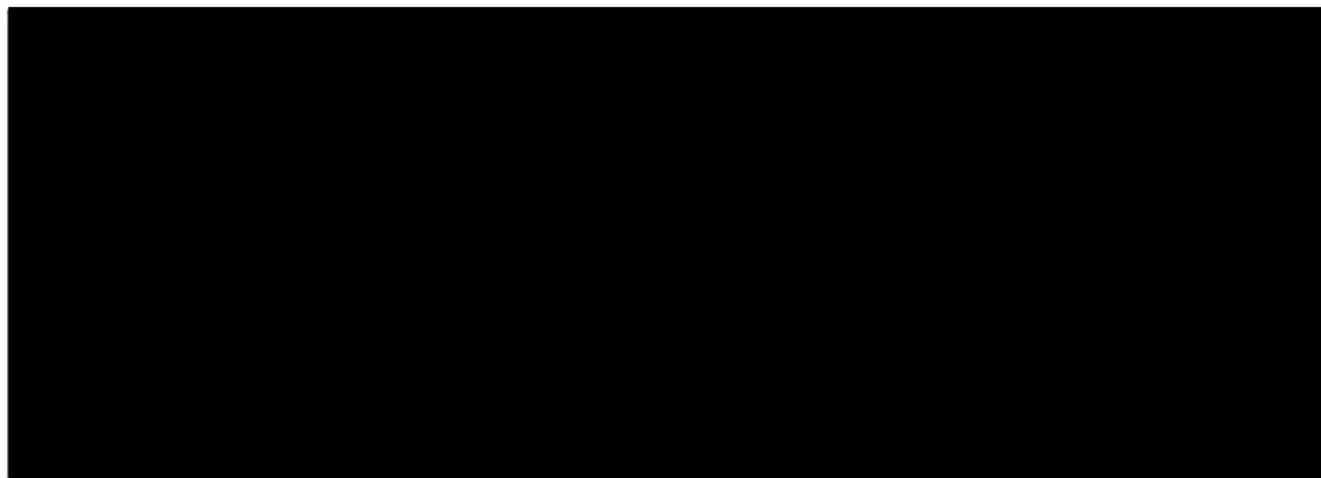
4. Items for which Customs Data are captured and exchanged

- 4.1 The Parties shall capture and exchange Customs Data for the products as set out in Annex C.
- 4.2 The Parties shall capture and exchange Customs Data via the channels and at the locations as set out in Annex D.

5. Data transmission relating to postal items and format of EDI messages

- 5.1 The provisions of Annex A stating the manner in which the Customs Data are exchanged by a Party may be varied by that Party from time to time by notification in writing to all other Parties.
- 5.2 Customs Data, described in Annex B and captured in accordance with Article 3 above, shall be transmitted by the postal operator of origin to the postal operator of destination by means of EDI messages via the System and [REDACTED]
- 5.3 The policy regarding timing of transmission of the Customs Data to the EDI network shall be as set out in Annex F.
- 5.4 The postal operator of origin shall transmit the Customs Data based on the events set out in Annex E.
- 5.5 Each Party shall transmit Customs Data that are Personal Data to the other Party using technical measures that ensure the confidentiality and security of the data transmitted.
- 5.6 No Party shall be obligated to transmit or receive Customs Data (including Personal Data) to any other Party until such time as each Party's legal requirements are satisfied and any applicable arrangements for protection and storage of Customs Data are made by the Parties and any intermediary entity that may be engaged in the transmission and/or storage of Customs Data.

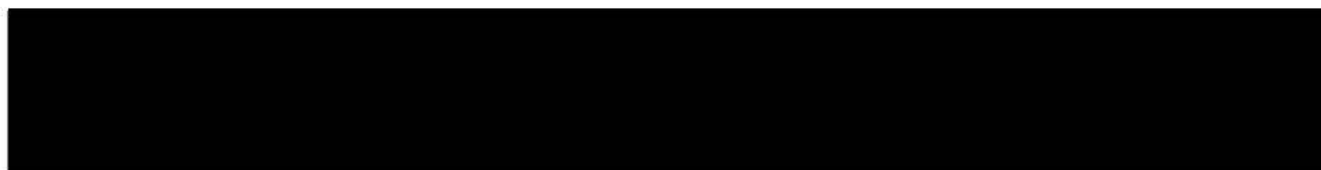
6. Exchange of information



7. Discrepancy between the paper and electronic versions of the Customs Form

In case of a discrepancy between the data on the Customs Form and the electronic data sent by one Party to another pursuant to this Agreement, [REDACTED]

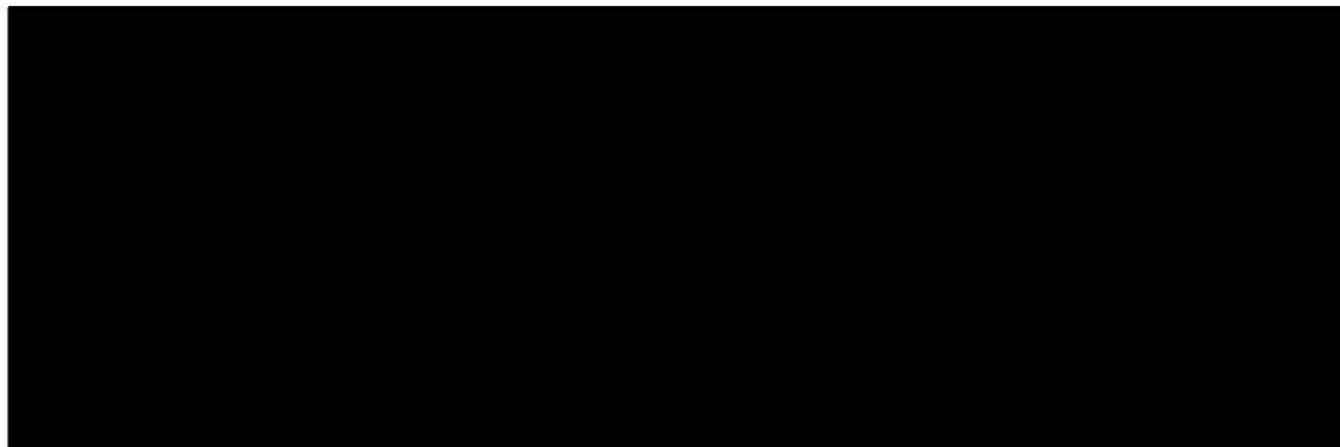
8. Use of the data exchanged



8.2 A Receiving Party shall ensure that the Authority to which it has transmitted a Sending Party's Customs Data (including any Personal Data contained therein) makes use of and/or discloses that Sending Party's Customs Data solely for [REDACTED]

8.3 The provisions of this Article 8 shall not restrict a Receiving Party's lawful disclosure of Customs Data received from other Parties in the event of legal requirements based on each Receiving Party's national laws or by order of any court, tribunal, or oversight agency of competent jurisdiction.

9. Data security and storage



10. Confidentiality

10.1 The Parties consider certain information included in this Agreement to be commercially sensitive information and agree that it should not be disclosed to third parties except as required by law. Except as required by law, the Parties shall treat as confidential and not disclose to third parties, absent express written consent by the other Party, any information related to this Agreement that is proprietary to another Party, including any information treated as non-public by the U.S. Postal Regulatory Commission ("Commission").

10.2 The Parties acknowledge that United States law may require that this Agreement and supporting documentation be filed with or submitted to the Commission, the U.S. Department of State, and/or other U.S. Government entities. The Parties authorize the United States Postal Service (USPS) to determine the scope of information that must be made publicly available under the Commission's rules. The Parties further understand that any unredacted portion of this Agreement or supporting documentation may be posted on the Commission's public website, www.prc.gov. The Parties have the right, in accordance with the Commission's rules, to address their confidentiality concerns directly with the Commission. The procedure for making an application to the Commission for non-public treatment of materials believed to be protected from disclosure is found at Title 39, Code of Federal Regulations, Section 3007.22, on the Commission's website: www.prc.gov/Docs/63/63467/Order225.pdf. At the Parties' request, the USPS shall notify the other Parties at the time of any filing with the Commission, the U.S. Department of State and/or any other U.S. Government entity.

10.3 To the extent the Parties intend to share or disclose non-public information other than Customs Data or Personal Data, they shall enter into a separate agreement if such obligation is not already in effect.

11. Notice

Any information required or authorized to be given by a Party to the other Parties in accordance with the provisions of this Agreement, unless otherwise specifically stipulated, shall be in writing and delivered personally or sent via facsimile or e-mail to the recipient's address for notices specified in Annex G and shall be deemed to have been received the same day it was delivered by hand or sent by facsimile or e-mail. If necessary, a notice may also be sent by mail. In such a case, it shall be deemed to have been received on the seventh business day following the date of mailing. Any Party may change its address and contact name by giving notice to the other Party in the manner set forth in this Article.

12. Liabilities and indemnities

12.1 In the event that a third party asserts a claim against a Party that is attributable to a breach of this Agreement by another Party, the latter Party shall indemnify the defending Party for, and hold the defending

Party harmless from, [REDACTED] In that instance, the indemnifying Party shall [REDACTED]

12.2 A Party shall not be liable to another Party nor shall it indemnify the other Party for [REDACTED]

12.3 Nothing in this Agreement shall be construed as an acknowledgment or concession regarding the validity of any claim or the entitlement of any Party to any amount of damages.

13. Force majeure

13.1 The Parties are released from [REDACTED] in the event of force majeure. All other rights and obligations under this Agreement shall continue to apply to the Parties in the event of force majeure.

13.2 "Force majeure" shall be deemed to be any event in which a Party fails, in part or full, to fulfil its obligations under this Agreement owing to reasons external to the Party that are unforeseeable, unavoidable and independent of that Party's control, and which are not attributable to any act or failure to take preventive action by that Party.

13.4 A Party seeking to rely on force majeure must give prompt written notice thereof to the other Parties and make all reasonable efforts to resume performance of its obligations [REDACTED] as soon as possible.

14. Entry into force and duration of this Agreement

14.1 This Agreement shall enter into force upon signature of two or more Parties and shall continue indefinitely unless terminated earlier by all of the Parties.

14.2 Withdrawal by one or some of the Parties does not constitute termination with respect to the Agreement. The Agreement will continue to be binding on the remaining Parties to the Agreement.

15. Opening of exchanges

Subject to Article 5.6 of this Agreement, the opening of exchanges of Customs Data between the Parties may begin on the date of entry into force of the Agreement. In the case of a postal operator acceding to the Agreement by invitation of a Party to the Agreement, such Parties may open exchanges when accession as set forth in Article 25 is completed.

16 Termination and withdrawal

16.1 Subject to the conditions laid out in Article 16.4 below, a Party shall be entitled by notice in writing to the other Parties to withdraw from this Agreement immediately if:

- (a) less than six months have elapsed since the date that this Agreement enters into force (which is the pilot test period)
- (b) the Exchange of Customs Data Guide is not adopted by the Parties within 12 months of the date that this Agreement enters into force;
- (c) another Party assigns or transfers, or purports to assign or transfer, any of its rights or obligations under this Agreement or any interest therein without the withdrawing Party's prior written consent;
- (d) another Party commits a material or persistent breach of any of its obligations hereunder and where the breach is capable of remedy fails to rectify such breach within 30 days of receiving a notice to do so; or
- (e) a new party accedes to the Agreement pursuant to Article 25, but such withdrawal must occur within 30 days of notice that a postal operator wishes to accede to the Agreement, as set forth in Article 25..

16.2 A Party may withdraw from this Agreement without cause and at any time with the provision of three months' written notice to the other Parties.

16.3 Withdrawal from this Agreement by a Party shall be without prejudice to any other rights of the Parties accrued up until the date of withdrawal.

16.4 The provisions of Articles 8, 9, and 10 shall survive the conclusion or termination of this agreement, as well as any other terms insofar as they apply to the Parties' continuing obligations to one another under this Agreement.

16.5 This Agreement may only be terminated by written mutual agreement of all of the Parties to it at the time of its termination.

17. Dispute resolution

17.1 If any dispute arises under or in connection with this Agreement the concerned Parties shall attempt to resolve such disputes amicably by referring the issue to the respective heads of the international business units of those Parties for discussions and with the aim of resolving the dispute. If this referral fails to achieve a resolution to the dispute, then the matter shall be referred to the respective chief executive officers of the concerned Parties for review and discussion with the aim of finding a resolution.

17.2 Any dispute which cannot be resolved in accordance with Article 17.1 shall be referred to arbitration for final settlement under the Rules of the International Chamber of Commerce (the Rules) by three arbitrators who have substantial experience in business disputes and appointed in accordance with the Rules. Unless the Parties agree otherwise, the place of arbitration shall be determined by the arbitrators, and the arbitration proceedings shall be conducted in the English language.

17.3 Notwithstanding the foregoing provisions of this Article 17, nothing in this Agreement shall prevent a Party from applying to a court of competent jurisdiction for injunctive relief pending the resolution of a dispute in accordance with the provisions of this Agreement.

18. Commercial nature of the Agreement

This is a commercial contract and not an agreement subject to public international law. It binds only the entities which are Parties to it and not their respective governments. By their signatures, the authorized representatives of the Parties warrant that their employing organizations have independent authority to enter into and be obligated by such commercial contractual agreements.

19. Language

This Agreement has been prepared in English. If the Agreement has been translated into another language, the English version shall prevail in case of any conflict and shall therefore be the binding version for both Parties. The Parties agree that the language of their correspondence and communication at the administrative level shall be in English unless otherwise agreed to by the Parties.

20. Amendments

20.1 Any amendment to this Agreement shall be made in writing and signed by, or on behalf of, each of the Parties.

20.2 Changes to the information presented in Annexes A, C, D, E, F, and G are anticipated and are not considered to be amendments to this Agreement. Such changes must be notified to the Parties in writing at least 30 business days in advance of the change if they require operational changes or changes to the Systems of the other Parties, and as soon as possible if not.

21. Waiver

21.1 No delay or omission by a Party to exercise any right or power accruing upon any non-compliance or default by the other Party with respect to any of the terms of this Agreement shall be construed as a waiver of such non-compliance or default.

21.2 A waiver by a Party of any breach of the terms of this Agreement shall not be construed to be a waiver of any preceding or succeeding breach.

21.3 To constitute a valid waiver, the terms of the waiver must be exchanged between the relevant Parties in writing.

22. Severability

If any provision of this Agreement is held to be invalid, unenforceable, or in conflict with any applicable law, treaty, or regulation related to this Agreement or its performance, that provision shall be deemed to no longer form part of this Agreement, and the remaining provisions shall remain in force.

23. Order of precedence

If there is any conflict or inconsistency between the text of the body of this Agreement, its Annexes, and/or any amendments to this Agreement under Article 20, such conflict or inconsistency shall be resolved by interpreting the components of this Agreement in accordance with the following order of precedence:

- (a) subsequent amendments to this Agreement under Article 20;
- (b) the text of the body of this Agreement;
- (c) subsequent amendments to the Annexes under Article 20; and
- (d) the Annexes.

24. Counterparts

This Agreement may be executed in counterparts. Each counterpart constitutes the agreement of each Party which has executed and delivered that counterpart to the other parties. Each executed counterpart is an original but the executed counterparts together constitute one and the same Agreement.

25. Accession

25.1 Any postal operator possessing full autonomy of the matters provided for in this Agreement may be invited by a Party to the Agreement to accede to the Agreement.

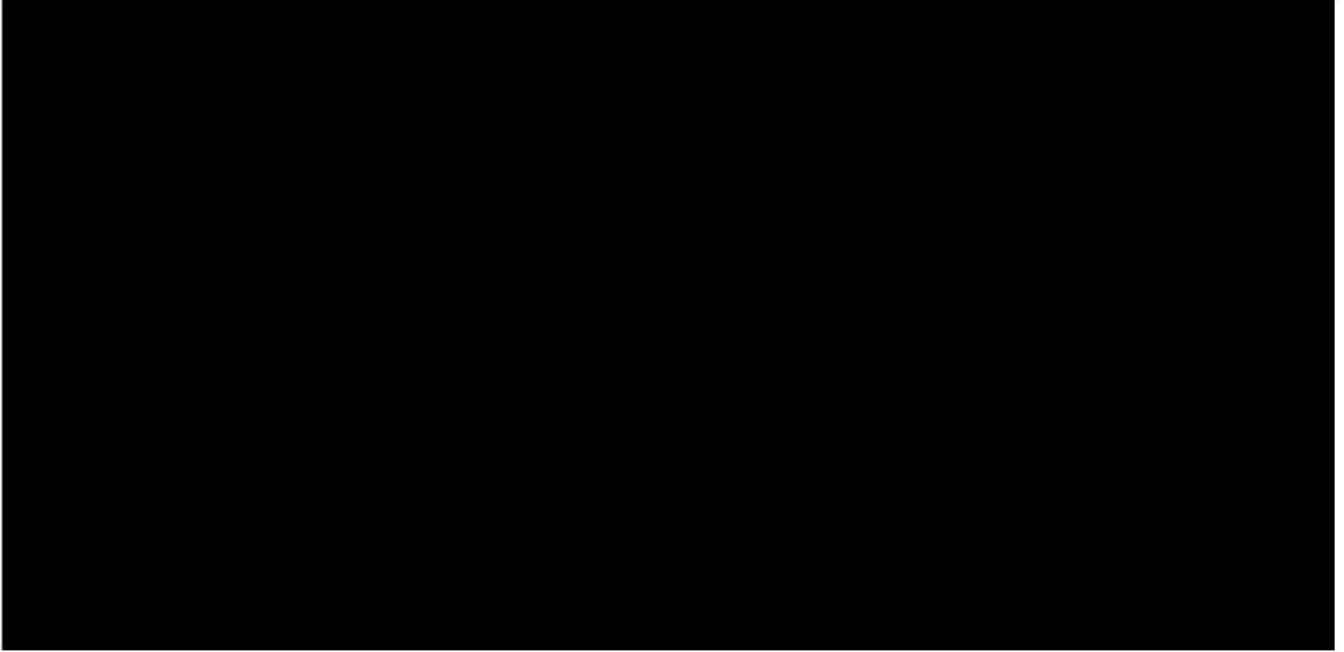
25.2 Accession to the Agreement shall be by invitation of a Party to the Agreement. Upon such invitation and signature of the Agreement by the postal operator wishing to accede, the inviting Party shall provide notice to all existing Parties pursuant to Article 11. Existing Parties shall have 10 days from the date of notice to object to the accession of the postal operator. If any Party objects, the postal operator shall not become a Party to the Agreement. If no Party objects, the postal operator who wishes to accede to the Agreement shall become a Party to the Agreement.

25.3 As set forth in Article 16(e), a Party may withdraw from the Agreement immediately rather than object to the accession of a new Party.

26. Entire Agreement

This is the entire agreement between the Parties with respect to its subject matter. It supersedes and replaces any written or oral arrangements, correspondence, conversations, and documents made or exchanged between the Parties prior to its execution. Any modifications made to this Agreement as well as to the periodically updated and duly approved Annexes shall have no effect unless explicit and confirmed in a written document signed by the Parties hereto.

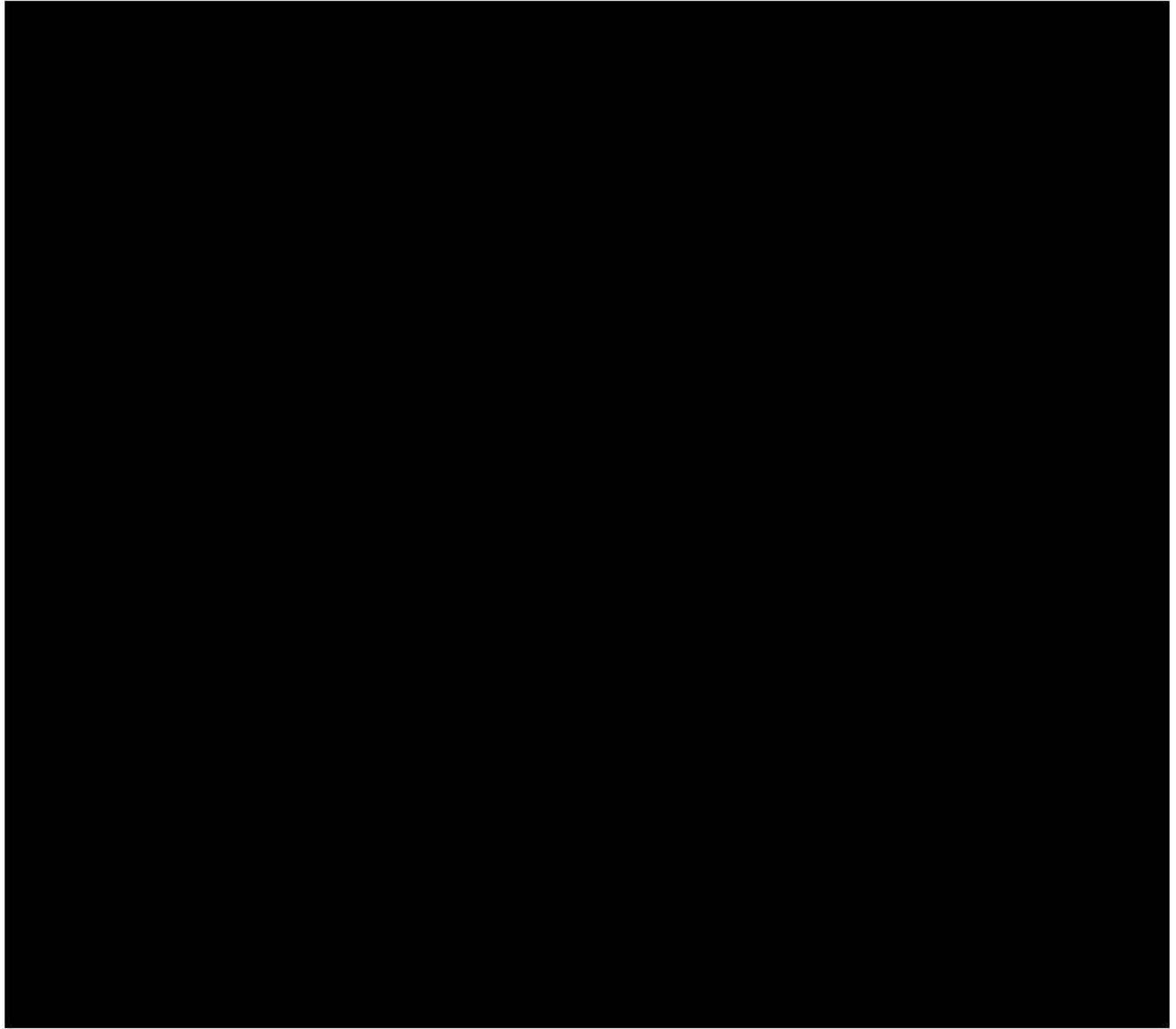
Annex A – Technical specifications and message standards to be used



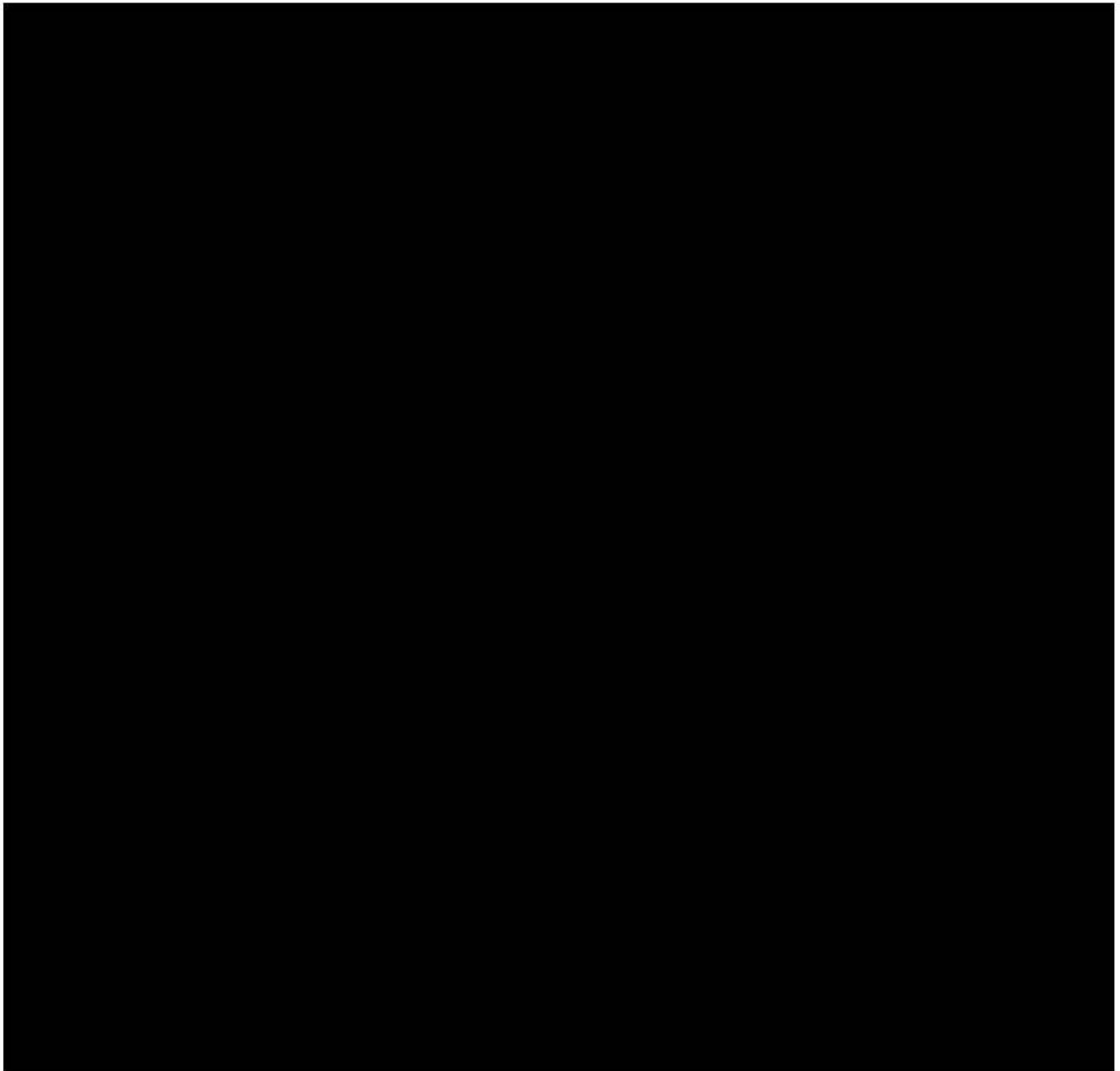
Annex B – Customs Data to be captured and exchanged



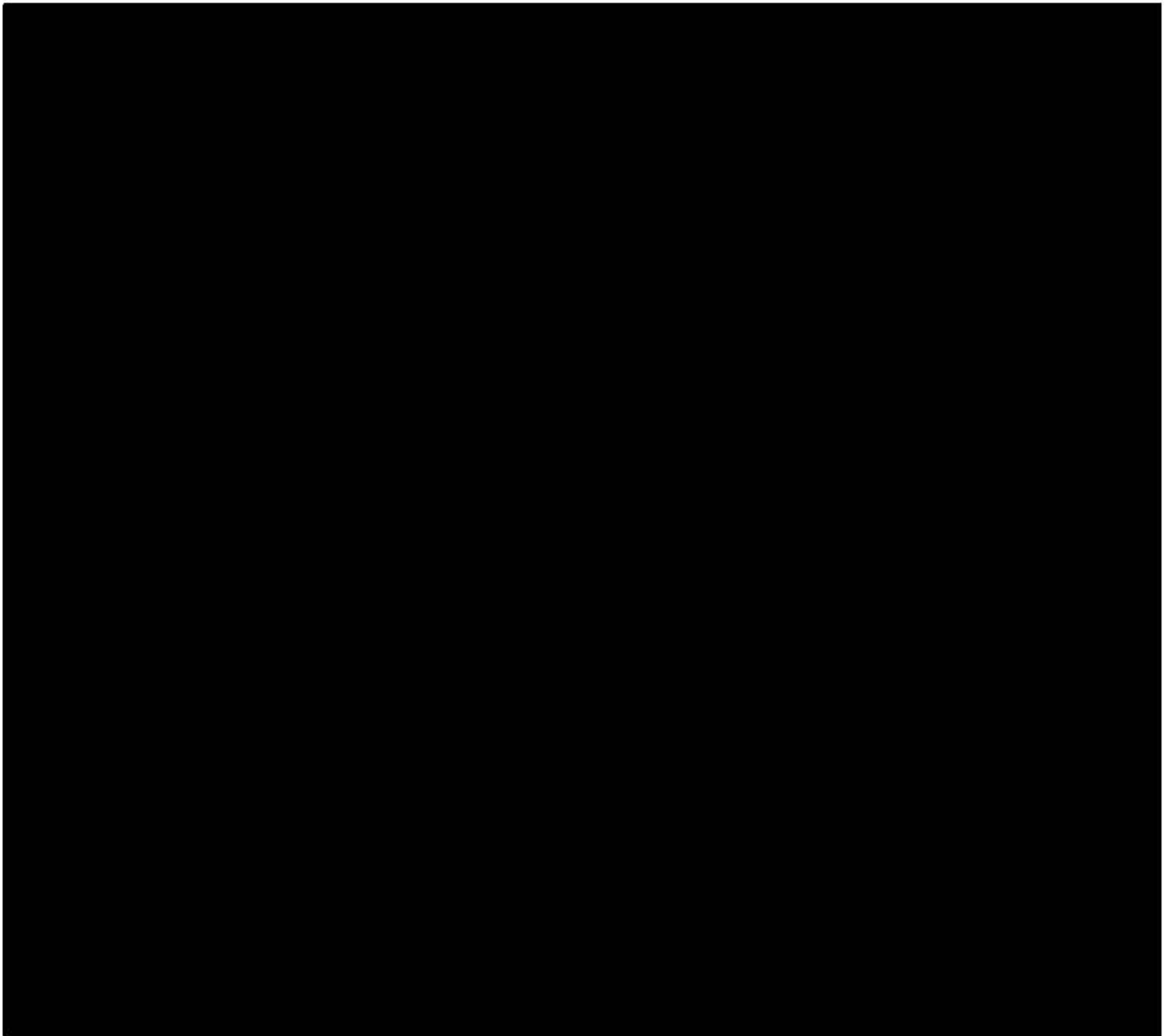
Annex C – The product(s) for which data shall be sent and/or received



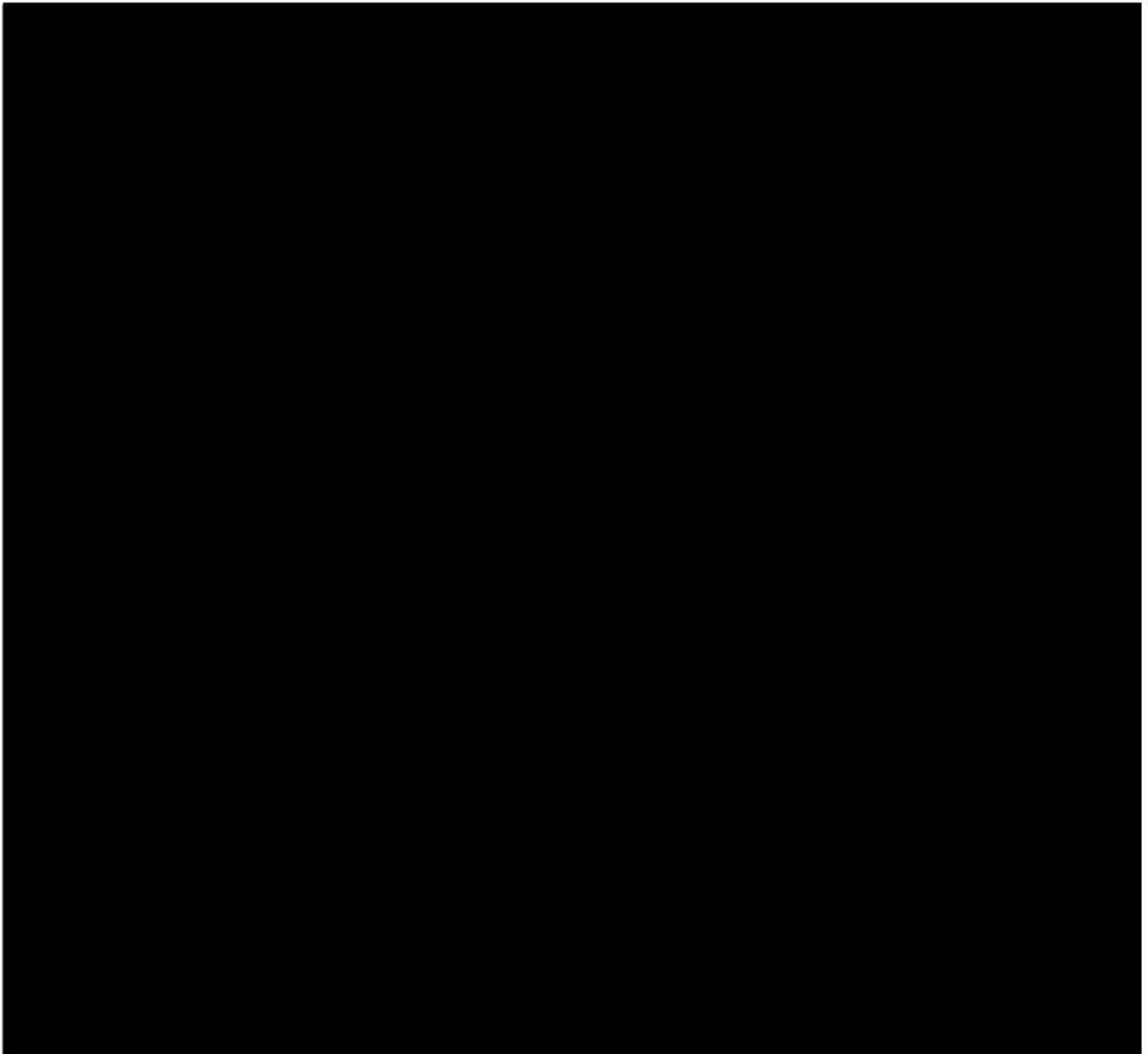
Annex D – The channel(s) and physical locations at which data shall be captured for outbound items




Annex E – Policy regarding the timing of creation of the electronic message to the EDI network




Annex F – Maximum time between the event causing creation of the electronic message, and transmission of the message to the EDI network

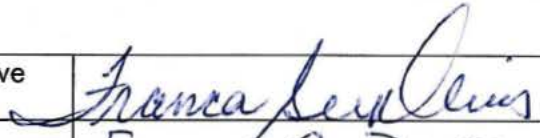


Annex G – Contact Details

Contact details for Notices	
For Bhutan Post	
For United States Postal Service	Ms. Cheri DeMoss Manager Trade Systems United States Postal Service Email: Cheri.L.DeMoss@usps.gov Telephone: 202-268-4113

Annex H – Signatories of the Agreement

BHUTAN POST	
Signature of Authorized Representative	
Name of Authorized Representative	Jigme Tenzin
Title of Authorized Representative	Mr
Date of Signing	26 th July 2017

UNITED STATES POSTAL SERVICE	
Signature of Authorized Representative	
Name of Authorized Representative	Franca S Davis
Title of Authorized Representative	Managing Director
Date of Signing	August 21, 2017